

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

OCT 17 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

) DOCKET FILE COPY ORIGINAL

)
) Implementation of the Subscriber Carrier
) Selection Changes Provisions of the
) Telecommunications Act of 1996
)

CC Docket No. 94-129

) Policies and Rules Concerning
) Unauthorized Changes of Consumers
) Long Distance Carriers
)

REPLY OF SPRINT CORPORATION

Sprint Corporation ("Sprint"), pursuant to Section 1.429(g) of the Commission's Rules, 47 C.F.R. §1.429(g), hereby respectfully submits its reply to the comments on and oppositions to its petition for reconsideration filed in the above-captioned docket.¹

In its petition, Sprint has requested that the Commission reconsider its *First Order on Reconsideration* (FCC 00-135) released May 3, 2000 (*First Reconsideration Order*) to the extent that the decision appears to classify as an IXC slam any unauthorized change in a subscriber's preferred carrier (PC) that occurs because of mistakes by a LEC in initiating a PC selection change and informing the IXC through the Customer Account Record Exchange (CARE) or some other process that it had gained a customer. Sprint has explained that in such circumstances, the IXC cannot be considered an "unauthorized carrier." The IXC would not have submitted the change and does not have any obligation to verify such "LEC-installs." See

¹ Only four parties -- AT&T, Verizon, SBC Communications ("SBC") and the United States Telecom Association ("USTA") filed comments on or oppositions to the petitions for reconsideration filed by Sprint and WorldCom.

No. of Copies rec'd
List A B C D E

0 + 4

47 U.S.C. §64.1100(d). Yet, Section 64.1150(d) appears to suggest that in any case before the administrative agency adjudicating a slamming complaint, where the accused IXC cannot produce a valid proof of verification of the carrier change, the IXC will be presumed to have clearly and convincingly violated the Commission's verification rules. Thus, the IXC would be subject to the Commission's liability rules and perhaps to additional penalties imposed by the State of the adjudicating agency. WorldCom has voiced a similar concern. *See* WorldCom Petition at 8-9 (Although "[a] non-executing carrier is only guilty of, and liable for, a slam if it *submitted* a PC change request to the executing carrier that was not properly verified" the administrative entity adjudicating a slamming "may misconstrue" Section 64.1150(d) to find a carrier guilty of a slam even where "the carrier never submitted a PC change request to the executing carrier...").

Of the four parties that filed responsive pleadings to the reconsideration petitions -- AT&T, Verizon and USTA -- addressed the concerns raised by Sprint and WorldCom in this regard.² And, both AT&T and Verizon agree with Sprint and WorldCom that IXCs cannot be held liable for "slams" when the subscriber is switched to a carrier not of his/her choice because of an error by the executing carrier.

AT&T correctly points out that while "Section 64.1150 in its current form is inartfully worded," such provision "cannot lawfully impose liability upon a carrier where this has been no breach by that entity of its duties under the statutes upon which the Commission's regulatory scheme is predicated or the substantive regulations adopted by the Commission to implement that statutory scheme." Comments at 3. Thus, AT&T believes that "[t]he Sprint and WorldCom reconsideration petitions are ...superfluous insofar as they appear to be premised on the

² SBC's opposition is limited to another concern raised by WorldCom.

assumption that such liability may be imposed upon an IXC in the absence" of a showing that the IXC actually submitted a PC change request to the executing carrier and the IXC breached its duty to properly verify such change request. *Id.* at 5-6.

Sprint agrees with AT&T an IXC cannot, either under Section 258 of the Act or the Commission's implementing regulations, legally be held to have slammed a subscriber gained by the IXC as a result of an "LEC-install." Sprint filed its petition out of an abundance of caution. Sprint is concerned that the administrative agency adjudicating a "slamming" complaint by the LEC-installed subscriber against such IXC may use the Commission "inartfully worded" Section 64.1150(d) to impose such liability. To avoid even the possibility of such an legally impermissible result, Sprint believes it necessary for the Commission to reword Section 64.1150(d) so as to make clear that once the IXC accused of a slam produces evidence that the complaining customer was a "LEC-install," the administrative agency must exonerate the accused IXC of slamming.

For its part, Verizon states that the rules do not have the "bizarre effect" of holding the IXC liable "for mistakes made by the LEC in executing orders [the IXC] submitted or even for cases in which customers were presubscribed to [the IXC] when [the IXC] did not submit any carrier-change order at all." Opposition at 2. Verizon suggests that the Commission clarify the executing carrier's liability to the subscriber for mistaken "LEC-installs" and explains its practice of offering to switch the subscriber to the carrier that the subscriber had actually selected when he/she called the LEC to order service at no charge and of possibly refunding any payments

(either by credit if the Verizon bills for the IXC or direct check if it does not) made by the subscriber for calls made while assigned to the wrong carrier.³ *Id.* at 3-4.

Sprint welcomes the fact that Verizon appears to understand that it is responsible for its mistakes and that it should bear the burden of providing restitution to the customer. Verizon's approach, however, leaves open the question of compensation to the authorized carrier as provided for under the FCC's rules as well as reimbursement to the accused but exonerated carrier. Although Verizon correctly observes that its mistakes as an executing carrier cannot be considered slams under the Commission rules, such observation does not mean that the LEC should be relieved of all responsibility for compensating both the authorized and exonerated carrier. USTA argues that the IXCs should be required to seek such compensation by filing damage claims before the Commission or a court of competent jurisdiction.⁴ USTA at 3. However, forcing both the authorized and exonerated IXCs to sue the LEC when the LEC concedes that it erroneously installed the customer to the accused IXC and in fact compensates the customer for such mistake would be a waste of resources not only for the FCC or courts which would have to hear and decide the complaint for damages but also for the carriers involved in the complaint case. There is no legal obstacle preventing the Commission or the State administrative agency adjudicating the slamming complaint from finding that the LEC must provide restitution to the

³ Verizon states that it would not recouse any amount it credited to the customer's account in this regard to the IXC for whom Verizon bills.

⁴ USTA also appears to suggest -- although this is by no means clear that -- that the IXC should be held liable for compensating the customer as required by the Commission's rules who has mistakenly been assigned to the IXC by the LEC and then seek to recover such monies from the LEC in a claim for damages before the Commission or in court. If this is in fact USTA's position, it is absurd. There is absolutely no legal justification -- and USTA provides none -- for holding the IXC liable in the first instance for mistaken LEC-installs. As stated, even Verizon states that requiring the IXCs to compensate the customers for LEC mistakes would be bizarre and does not dispute its liability to the customer in these cases.

IXCs for mistakes made by the LEC in the execution process and specifying how such restitution is to be measured. Thus, as set forth in its petition, Sprint believes that the Commission should clarify that upon exonerating the accused carrier on the basis that the customer had been assigned to the carrier as a result of a "LEC-install," the relevant government agency "should require the LEC to provide restitution to the subscriber and authorized carrier as specified in the Rules as well as pay the previously accused but now exonerated carrier for all charges and fees incurred by the subscriber when such subscriber was erroneously assigned to IXC by the LEC but not paid by such subscriber." Petition at 5.

Respectfully submitted,

SPRINT CORPORATION



Leon M. Kestenbaum

Jay C. Keithley

Michael B. Fingerhut

401 9th Street NW, Suite 400

Washington, D.C. 20004

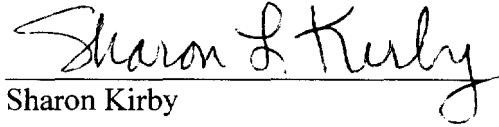
(202) 585-1909

Its Attorneys

October 17, 2000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **REPLY** of Sprint Corporation was sent by hand or by United States first-class mail, postage prepaid, on this the 17th day of October, 2000 to the below-listed parties:


Sharon Kirby

*Dorothy Attwood, Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Katherine A. Rolph
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
Counsel for Excel Communications, Inc.

*Sheryl Todd, Esq.
Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

James M. Smith
Marcy A. Greene
Excel Telecommunications, Inc.
1133 Conn. Ave., NW, Suite 750
Washington, DC 20036

Lori Wright, Esq.
Karen Reidy
WorldCom
1801 Pennsylvania Ave., NW
Washington, DC 20006

Hope Thurrott
Roger K. Toppins
Paul Mancini
SBC Communications, Inc.
1401 I Street, NW, 11th Floor
Washington, DC 20005

Peter Jacoby, Esq.
AT&T Corp., Suite 1000
1120 20th Street, NW
Washington, DC 20036

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
John W. Hunter
Julie E. Rones
U.S. Telecom Association
1401 H Street, NW, Suite 600
Washington, DC 20005

*Michelle Walters, Esq.
Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

John M. Goodman
1301 I Street, NW
Washington, DC 20005
Counsel for Verizon

*International Transcription Service
445 12th Street, SW
Washington, DC 20554

*Hand Delivery